authority to issue such an order in the action at law, to which the widow, who had control of the body, was not a party, but that in the suit in equity, to which she was a party, such an order would be made, it being within the general powers of a court of equity, and in the furtherance of justice. In the principal case, however, the court rests its decision upon the ground that "neither the right of sepulture, nor the right to have the body remain untouched and unmolested, is an absolute and fixed right, but these rights must and should yield when they conflict with the public good or where the demands of justice require such subordination."

EVIDENCE—BURDEN OF PROOF.—In an action for the value of goods lost, and for damage to other goods, while stored in the defendant's warehouse, plaintiff made out a prima facie case by showing that he deposited the goods in the warehouse in good condition, which, on demand, the defendant failed to deliver, or else delivered in a damaged condition. The defendant requested and the court refused an instruction that the burden of proof was on the plaintiff, and that unless the weight of evidence was in favor of the plaintiff, a verdict should be returned for the defendant. *Held,* that the failure to give the charge requested was erroneous. *Berger* v. *St. Louis Storage & Commission Co.* (1908), — Mo. App. —, 114 S. W. 69.

This case brings up the question as to whether the burden of proof shifts from one side to the other during the course of the trial. Upon this point there is much confusion. One view of the matter is that as soon as the party upon whom the burden of proof originally rests makes out a prima facie case, the burden shifts to the other party, and if the latter makes out a prima facie defence, the burden is again shifted. Supporting this view, among other cases, are *Philadelphia & Reading R. R.* v. *Anderson,* 94 Pa. St. 351; *Campbell* v. *McCormac,* 90 N. C. 491; *McKenzie* v. *Oregon Improvement Co.,* 5 Wash. 409; *Succession* v. *Maginnis,* 44 La. Ann. 1043; *Meikel* v. *State Savings Institution,* 36 Ind. 355. The view of the present case would, however, appear to be the better doctrine. The burden of proof, as defined by the court, is the duty which rests upon a party asserting the affirmative of an issue, of establishing it by a preponderance of the evidence. Thus used, it never shifts from side to side. *Pease* v. *Cole,* 53 Conn. 53; *Scott* v. *Wood,* 81 Cal. 398; *Eastman* v. *Gould,* 63 N. H. 89; *Berringer* v. *Lake Superior Iron Co.,* 41 Mich. 305; *Farmers' Loan & Trust Co.* v. *Siefke,* 144 N. Y. 354; *Gay* v. *Bates,* 99 Mass. 263; *Wilder* v. *Cowles,* 100 Mass. 487; *Atkinson* v. *Goodrich Transportation Co.,* 69 Wis. 5; 2 ENC. EVI. 779. The burden of proof should be carefully distinguished from the burden of introducing evidence which may constantly shift from side to side during the course of the trial. Quite likely much of the confusion which exists on the subject is due to the failure to agree on just what is meant by the term "burden of proof."

EVIDENCE—COMPELLING ACCUSED TO CRIMINATE HIMSELF—WAIVER OF PRIVILEGE.—On his first trial for murder the defendant tobk the stand in his own behalf. After judgment against him he procured a new trial. At the